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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (S)No. 5845/2007

PETITIONER Sadanand Nayak s/o Mohar Singh Nayak, aged about 26 years, R/o village Pandaripani, Post Bamhani, Police Station Basna, District Mahasamund(CG)

Versus

RESPONDENTS

1. State of Chhattisgarh, Through Secretary, Panchayat & Gramin Vikas Vibhag, DKS Bhawan, Raipur, District Raipur (Chhattisgarh)
2. Collector, Mahasamund, District Mahasamund(CG)
3. Chief Executive Officer, Janpad Panchayat Pithora, District Mahasamund(CG)
4. District Education Officer, Mahasamund, District Mahasamund(CG)
5. Block Education Officer, Pithora, District Mahasamund(CG)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUION OF INDIA

Appearance:

Shri Manoj Paranjape, Counsel for the petitioner.

Ms. Sunita Jain, Panel Lawyer for the State on advance copy.

ORAL ORDER
(4.10.2007)

SUNIL KUMAR SINHA, J.

Heard on admission.

The petitioner, who was appointed as a Shiksha Karmi Grade-III by the order of Janpad Panchayat, Pithora dated 25.6.2007(Annexure P-6), has challenged the correctness, legality and proprietary of the order dated 28.7.2007 (Annexure P-10), passed by the Collector, Mahasamund under sub-section (1) of Section 85 of the M.P.(CG) Panchayat Raj Avam Gram Swaraj Adhiniyam 1993(hereinafter referred to as 'the Act'), whereby, the Collector has suspended the execution of the common appointment order, including that of the petitioner, issued for

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Shiksha Karmi Grade-III on 25.6.2007. After suspending the said order, the order has been sent for its confirmation to the Director Panchayat, being the officer nominated by the State government under sub-section (2) of Section 85 of the Act.

Learned counsel for the petitioner argues that the reasons assigned in the order dated 28.7.2007 are not correct and the action taken by the Collector under sub-section (1) of Section 85 of the Act is not in accordance with law.

I have perused the order (Annexure P-10).

The ground for suspending the order is that on an enquiry by the 3 members committee regarding the irregularities made in the appointment of Shiksha Karmi Grade-III, it was found that wrong marks were allocated to various candidates and the candidates who were not required to be selected, have been selected and due to their selection, the merit-list has been affected and after being satisfied regarding such report, submitted by the Inquiry Committee, the Collector passed the aforesaid order and has sent the copy for its confirmation to the concerned authority.

Section 85 of the Act provides power to suspend execution of orders etc. Sub-section (1) provides that the State Government or the prescribed authority may by an order in writing and for reasons to be stated therein suspend the execution of any resolution passed, order issued, licence or permission granted or prohibit the performance of any act by a Panchayat, if in his opinion

(a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorized;

(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or is contrary to any law; or

(c) the execution of such resolution or order, or the continuance in force of such licence or permission or the doing of such act is likely-

(i) to cause loss, waste or misapplication of any money or damage to any property vested in the Panchayat;

(ii) to be prejudicial to the public health, safety or convenience;

(iii) to cause injury or annoyance to the public or any class or body of persons; or

(iv) to lead to a breach of peace.

Sub-section (2) provides that whenever an order is made by the prescribed authority under sub-section (1), it shall forthwith and in no case later than ten days from the date of order, forward to the State Government or the Officer nominated by the State Government for this purpose, copy of the order with the statement of reasons for making it, and the State Government or the officer nominated by it (may confirm, set aside, revise or modify the order) or direct that it shall continue to be in force with or without modification permanently or for such period as may be deemed fit.

The proviso to sub-section (2) is also there which provides that no order of the prescribed authority passed under sub-section (1) shall be confirmed, set aside, revised or modified by the State Government or the Officer nominated by it without giving the Panchayat concerned a reasonable opportunity of being heard against the proposed order.

In the present case, the petitioner has visited the High Court at the stage of dispatch of the order by the Collector under sub-section (1) of Section 85 for a proceeding to be drawn under sub-section (2) of the aforesaid Section. That means the validity of the order is still under consideration within the provisions of sub-section (2) of Section 85 and the proceedings initiated by the prescribed authority under sub-section(1) of Section 85 of the Act have not reached to the finality.

So far as the satisfaction of the Prescribed Authority is concerned, it has recorded the reasons regarding his satisfaction and the satisfaction is based upon the report of 3 members

committee regarding the irregularities committed in the appointment.

I am not inclined to interfere in this petition at this stage, when the matter is sub-judice before the Government for its confirmation as has been stated by learned counsel for the petitioner. The petition is dismissed at this stage.

However, the petitioner shall be at liberty to visit this Court once again, if such an exigency arises after passing of the order under sub-section (2) of Section 85 of the Act by the concerned authority of the State.

Sd/-
Sunil Kumar Sinha
Judge

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